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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/038,973	12/31/2001	James J. Hlaban	17,693	9556

23556 7590 11/25/2003

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EXAMINER

ANDERSON, CATHARINE L

ART UNIT PAPER NUMBER

3761

DATE MAILED: 11/25/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

.10/038,973

Applicant(s)

HLABAN ET AL.

Examiner

C. Lynne Anderson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-9 and 21-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-9 and 21-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 14,15.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 15 September 2003 has been entered.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 3-5, 9, 21-23, 27, and 28 are rejected under 35 U.S.C. 102(e) as being anticipated by Osborn, III et al. (6,254,584).

With respect to claim 28, Osborn discloses an absorbent article 20, as shown in figure 4, configured for disposition within the vestibule of a female wearer, comprising an absorbent 22. The absorbent 22 comprises an upper surface 124 having a slit 127,

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as shown in figure 4, which provides at least one fluid intake enhancement means. The absorbent 22 has a width no greater than about 70 mm, a length no greater than 100 mm, and a thickness no greater than 10 mm, as disclosed in column 5, lines 15-24. The slit 127 extend through at least 50% of the z-axis thickness of the absorbent 30, as shown in figure 4, and provide increased surface area of the absorbent 22 when the absorbent article 20 is folded along an axis parallel to the longitudinal axis.

With respect to claim 1, the slit 127 minimizes the surface area of the portion of the absorbent article 20 that comes into contact with the floor of the vestibule, as the surface of the slit is recessed from the upper surface of the absorbent article 20, and therefore not in contact with the floor of the vestibule.

With respect to claim 3, the slit 127 is a single continuous slit, as shown in figure 4.

With respect to claim 4, the slit 127 extends 100%, or at least 80%, of the length of the absorbent 22.

With respect to claim 5, the slit extends at least 80% of the width of the absorbent 22.

With respect to claim 9, the absorbent 22 comprises superabsorbent polymer, as disclosed in column 6, line 17.

With respect to claim 21, the slit 127 is a single continuous slit, as shown in figure 4.

With respect to claim 22, the slit extends 100%, or at least 90%, of the length of the absorbent 22.

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With respect to claim 23, the slit extends at least 90% of the width of the absorbent 22.

With respect to claim 27, the absorbent 22 comprises superabsorbent polymer, as disclosed in column 6, line 17.

Claims 1, 6-9, and 24-28 are rejected under 35 U.S.C. 102(e) as being anticipated by Sartorio et al. (6,319,238).

With respect to claim 28, Sartorio discloses an absorbent article 10, as shown in figure 1, configured for disposition within the vestibule of a female wearer, comprising an absorbent 30. The absorbent 30 comprises an upper surface 22 having a slit 40, as shown in figure 2, which provides at least one fluid intake enhancement means. The absorbent 30 has a width no greater than about 70 mm, as disclosed in column 3, lines 56-58. The length of the article is less than 100 mm, as disclosed in column 4, lines 8-11, and the thickness is less than 10 mm, as disclosed in column 3, lines 48-50. The slits 40 extend through at least 50% of the z-axis thickness of the absorbent 30, as shown in figure 5, and provide increased surface area of the absorbent 30. The increased surface area allows fluids to be more rapidly absorbent when the article 10 is folded along an axis parallel to the longitudinal axis.

With respect to claim 1, the slit 40 further provides a placement enhancement means, which minimizes the surface area of that portion of the absorbent article 20 that comes in contact with the floor of the vestibule. The surface area of the absorbent 30

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within the slit 40 will not contact the floor of the vestibule, thereby minimizing the surface area in contact.

With respect to claim 6, the slit 40 is a series of slits, as shown in figure 2.

With respect to claim 7, the slits 40 extend 100%, or at least 80% of the length of the absorbent 30, as shown in figure 1.

With respect to claim 8, the slit 40 extends at least about 80% of the width of the absorbent 30, as shown in figure 5.

With respect to claim 9, the absorbent 30 comprises a superabsorbent polymer, as disclosed in column 6, lines 33-36.

With respect to claim 24, the slit 40 is a series of slits, as shown in figure 2.

With respect to claim 25, the slits 40 extend 100%, or at least 90% of the length of the absorbent 30, as shown in figure 1.

With respect to claim 26, the slits 40 extend at least 90% of the width of the absorbent 30, as shown in figure 5.

With respect to claim 27, the absorbent 30 comprises a superabsorbent polymer, as disclosed in column 6, lines 33-36.

Response to Arguments

Applicant's arguments filed 15 September 2003 have been fully considered but they are not persuasive.

With respect to Applicant's argument that Osborn, III et al. fail to disclose a slit, it is noted that the definition of slit is a long, narrow cut or opening. Osborn discloses an

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absorbent article having an upper surface comprising the top layer of the article. The absorbent comprises a long narrow opening, as shown in figure 4, which fulfills the physical limitation of a slit located on the upper surface. Osborn may use the term "channel" to define the structure, but the structure may also be defined as a slit, since it is a long, narrow opening. The bottom of the slit 127 is located at 50% of the thickness of the absorbent at points 23A and 23B that are adjacent the slit 127. The slit 127 therefore extends through about 50% of the z-axis thickness of the absorbent.

With respect to Applicant's argument that Sartorio et al. fail to disclose a slit, it is noted that while Sartorio may use the term "channel" to describe the structure, the structure may also be described as a slit, since it is a long, narrow opening.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the z-axis lying parallel to the height or thickness of the absorbent) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*; 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The z-axis is not defined in the claim, and may therefore lie parallel to any direction. Sartorio therefore discloses a slit that extends through at least 50% of the z-axis thickness of the absorbent.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Lynne Anderson whose telephone number is (703) 306-5716. The examiner can normally be reached on Monday through Friday.

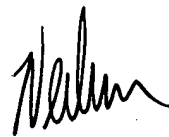
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (703) 308-1957. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3590.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

CMA

cla

November 20, 2003



**WEILUN LO
SUPERVISORY PATENT EXAMINER
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